IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.475 OF 2000
IN
NOTICE OF MOTION NO.2365 OF 1999
IN
L.C. SUIT NO.2791 OF 1999

Shri Mansoorbhai Noorbhai
residing at Hill View, 158,
Hill Road, Bandra (West), Bombay-50 ... Appellant

V/s.

1. Shri Homraj Bhikamchand Zaveri
carrying on business at Shop No.1-A,
Baxoubhoy Mansion, 170-A, Hill Road
Bandra (West), Bombay - 50

2. The Municipal Corporation Gr.
Bombay, Mahapalika Marg, Mahapalika
Bldg., Fort, Bombay - 1 ... Respondents

Mr.K.K. Tated for Appellant
None for Respondent No.1
Mr.J. Xavier for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 19, 2004**

P.C:

. This Appeal from Order is directed against the order in which the Notice of Motion has been made absolute. The Notice of Motion is taken out in a suit filed by the plaintiff for injunction. It appears that the notice was issued by Respondent No.2-Corporation against Respondent No.1, who is the occupier of the suit premises, for demolition. The order of the Deputy

Municipal Commissioner which has been challenged in the suit establishes that the suit structure was not found in any city survey plan and that Respondent No.1 had fraudulently managed to get repair permissions for the suit structure. According to the order passed by the Respondent-Corporation, the suit structure has been erected on the basis of permission for repairs when there was no structure in existence prior to the datum-line of 1962. It appears that when the initial order was passed by the Corporation, Respondent No.1 had challenged the order by filing suit No.9560 of 1996 which was later withdrawn by him since the statutory notice under the Bombay Municipal Corporation Act was not given to the Corporation. Respondent No.1 had sought liberty to withdraw the suit and to file the present suit within six weeks therefrom. The appellant made an application by way of Chamber Summons for being added as party to the suit as he is the landlord of the suit premises.

2. The suit structure has been in existence at least since 1996. According to the trial Court, although there is no proof of existence prior to 1961-62, some evidence indicates that it was in existence after 1962. The trial Court has, therefore, granted the Notice of Motion in terms of prayer clause (a) and injuncted the Corporation from demolishing the

suit structure.

3. In my view, rather than interfering with the order at this juncture, since the structure has been in existence in any event from 1996, it would be more appropriate to expedite the suit. I am informed that the pleadings are complete and the issues have been framed. The trial Court is, therefore, requested to complete the hearing of the suit and decide the suit by 31.12.2005.

4. Appeal from Order is disposed of accordingly.